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Droid Bionic pops up on Motorola site, looks set for September 8 release

By Brian Heater posted Aug 28th 2011 7:54AM



DROID BIONIC™ BY MOTOROLA

ITEM NO. MOTXT865

PRODUCT FEATURES

- 4G LTE speed and dual-core 1GHz processor
- Multitask and use large screen and keyboard with webtop app
- Watch streaming video on 4.37 qHD screen or record in 1080p HD

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Between the [leaked ads](#), [blurry photos](#) and [walkthrough videos](#), it seems that we've seen Motorola's [reworked Droid Bionic](#) pretty much everywhere but in the hands of consumers. Looks like the company is ready to take one more baby step toward that eventuality, with what appears to be an official Bionic Twitter account (we're working to get confirmation) indicating a September 8th release date, while a product page with some new shots of the device has also gone live. The page is still sadly lacking in-depth specs, but the handful of photos should keep eager customers happy at least until our friend [in the leather blouse](#) slices the head off another robot.

VIA [Droid Life](#), [AnandTech](#)
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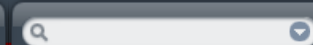
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Motorola Droid Bionic shows on Web store, lands Sept. 8

updated 09:10 am EDT, Sun August 28, 2011



Droid Bionic confirmed shipping
September 8

The Motorola [Droid Bionic](#) has finally been [made official](#) by the company on its Web store after a difficult gestation. The company has also [tweeted](#) that the 4G LTE handset will finally go on sale on September 8 as anticipated, nearly a full eight months since being unveiled at CES in January. It had originally been expected to arrive by spring, but was delayed as the result of a switch from an [NVIDIA Tegra 2](#), to a TI OMAP processor among other possible issues.

The Droid Bionic centers on a large 4.3-inch, 540x960 pixel qHD display, and is powered by a 1GHz-dual core processor matched with at least 512MB of RAM. It has an 8-[megapixel](#) camera on the rear and a VGA front facing camera for video chatting. The switch to the TI OMAP processor has given the Droid Bionic the ability to shoot video in 1080p.

When the Droid Bionic goes on sale September 8, it will also be available in a [special package](#) being offered by Costco. [The deal](#) is said to include a docking station, a car windscreen dock, an extra battery and a battery dock worth up to \$200 for no additional charge.



By Electronista Staff

TAGS : [Motorola](#), [mobile phones](#), [Droid Bionic](#)

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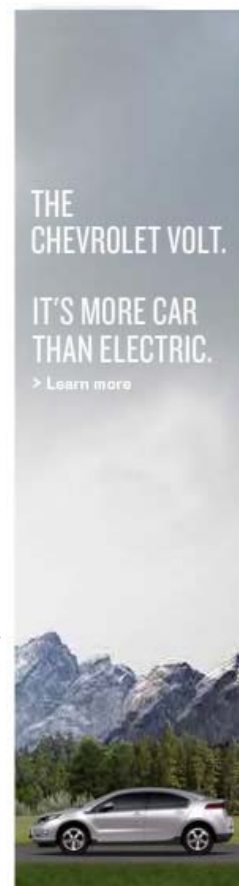
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EXHIBIT 8

Yothers, Stuart

From: Chris Wion [mailto:chrisw@dhl.com]
Sent: Friday, October 07, 2011 3:01 PM
To: Phil McCune
Subject: Msft's proposed Motion for Leave to Amend Infringement Contentions

Phil,

As you are aware, the parties exchanged their preliminary infringement contentions on Sept. 2, 2011. We have become aware that Motorola began selling the Droid Bionic smartphone in the United States on Sept. 8, 2011, at earliest. We believe that the Bionic infringes the '780 and '582 patents. Because Motorola brought the Bionic to market after the parties' exchange of preliminary infringement contentions, we intend to amend our infringement contentions to add the Bionic as an accused product. Like the other 24 Motorola products we have accused, the Bionic is an Android device and therefore, we believe it infringes the '780 and '582 patents in substantially the same manner as the already accused products. As such, our amended infringement contentions directed toward the Bionic are substantially similar to the infringement theories we previously presented.

We've placed our amended materials at the following link for your review:
<https://signin.sidleyfiletransfer.com/fs/v.aspx?v=8a6d64895f66b7a97166>. We've included redline copies of the amended documents compared to the originals. Notice that the main contention charts are not updated; only the appendices relating to the Bionic are updated (or new, in the case of Appendix C-19).

Accordingly, we intend to move the Court for leave to amend our preliminary infringement contentions. A copy of our proposed Motion (with exhibits) is attached.

Because of the substantial similarities between the Bionic and the previously accused products and our timely efforts to update our contentions, we don't believe such an amendment will prejudice Motorola's arguments or defenses. Please confirm that Motorola will not oppose this motion. If Motorola does oppose this motion, please let me know when you are available to meet and confer so that we might understand Motorola's bases for opposition.

Thank you,

-Chris

Christopher T. Wion
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HONORABLE JAMES L. ROBART

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICROSOFT CORPORATION,
Plaintiff,

v.

MOTOROLA, INC., et al.,
Defendants.

No. C10-1823-JLR

**(UNOPPOSED) MOTION FOR
LEAVE TO AMEND PRELIMINARY
INFRINGEMENT CONTENTIONS**

Noted: Friday, October 7, 2011

MOTOROLA MOBILITY, INC., et al.,
Plaintiffs,

v.

MICROSOFT CORPORATION,
Defendant.

**(UNOPPOSED) MOTION FOR LEAVE TO
AMEND PRELIMINARY
INFRINGEMENT CONTENTIONS**

LAW OFFICES
DANIELSON HARRIGAN LEYH & TOLLEFSON LLP
999 THIRD AVENUE, SUITE 4400
SEATTLE, WASHINGTON 98104
TEL., (206) 623-1700 FAX, (206) 623-8717

1 Microsoft Corporation (“Microsoft”) hereby moves, unopposed, for an Order
 2 permitting Microsoft to amend its Asserted Claims and Preliminary Infringement Contentions
 3 (“Infringement Contentions”).

4 On September 2, 2011, Microsoft served its original Asserted Claims and Infringement
 5 Contentions on Motorola Mobility, Inc. (“Motorola Mobility”), Motorola Inc., (n/k/a
 6 “Motorola Solutions”) and General Instrument Corporation (“General Instrument”)
 7 (collectively, “Motorola”) pursuant to the Court’s Standing Order for Patent Cases and the
 8 Court’s August 5, 2011 Minute Order Setting Trial Dates and Related Dates. In those original
 9 Infringement Contentions, Microsoft accused 24 of Motorola’s smartphone and tablet devices
 10 of infringing U.S. Patents No. 6,339,780 and No. 7,411,582 (the “Microsoft Patents”).

11 Microsoft now moves for leave to amend its Infringement Contentions to include the
 12 Motorola Droid Bionic XT875 (“Bionic”). In a Sept. 7, 2011 press release (attached as Exhibit
 13 A), Motorola announced its plans to release the Bionic to the market the next day. The Bionic
 14 runs the Android operating system, and consequently, Microsoft believes that the Bionic also
 15 infringes the Microsoft Patents. Microsoft intends to include contentions relating to the Bionic
 16 in its amended Infringement Contentions.

17 Microsoft has good cause to amend its Infringement Contentions. The Bionic was not
 18 on the market when Microsoft filed its original Infringement Contentions on Sept. 2, 2011.
 19 Microsoft learned of the Bionic’s market availability through Motorola’s public press
 20 announcement, several days after the parties exchanged infringement contentions.
 21 Furthermore, the Bionic shares strong similarities with the other 24 accused Motorola
 22 smartphone and tablet devices. Like the other accused devices, the Bionic runs the Android
 23 operating system, which forms a substantial basis for Microsoft’s Infringement Contentions.
 24 Given these strong similarities, the Bionic is a natural addition to this matter. Moreover, due to
 25 such similarities, Motorola will not be prejudiced by the addition of the Bionic to the case

1 because the addition should not substantially affect any of Motorola's arguments or defenses.
 2 Indeed, Motorola does not oppose Microsoft's motion to amend its Infringement Contentions.

3 Finally, this motion to amend is timely. It comes shortly after Motorola announced the
 4 Bionic's market availability (Sept. 7, 2011), well in advance of the deadline for exchange of
 5 Non-Infringement Contentions (Dec. 2, 2011), several months before the Markman hearing
 6 (Mar. 9, 2012), and more than a year before trial (November 26, 2012).

7 Counsel for Motorola has advised that Motorola does not intend to oppose this Motion.
 8 In light of Motorola's non-opposition and the above-described circumstances establishing good
 9 cause, the Court should permit Microsoft to amend its Infringement Contentions in order to
 10 include Motorola's Bionic smartphone as an additional accused product. Microsoft has
 11 included the Bionic in its First Amended Asserted Claims and Preliminary Infringement
 12 Contentions, pursuant to the Court's Standing Order for Patent Cases. A copy of the cover
 13 sheet for the amended Infringement Contentions is attached hereto as Exhibit B.

14 CONCLUSION

15 Microsoft respectfully requests that the Court grant this motion, and enter an Order
 16 allowing Microsoft to serve its First Amended Asserted Claims and Preliminary Infringement
 17 Contentions, which include the Bionic as an additional accused product.

18 DATED this 7th day of October, 2011.

19 DANIELSON HARRIGAN LEYH & TOLLEFSON LLP

20 By /s/ Christopher Wion
 21 Arthur W. Harrigan, Jr., WSBA #1751
 22 Christopher Wion, WSBA #33207
 23 Shane P. Cramer, WSBA #35099
 24
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24 Counsel for Microsoft Corporation
25

CERTIFICATE OF SERVICE

I hereby certify that on October 7, 2011, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

Attorneys for Defendants Motorola Solutions, Inc., Motorola Mobility, Inc., and General Instrument Corporation

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Lynn M. Engle
Summit Law Group

Steven Pepe
Jesse J. Jenner
Norman Beamer
Paul M. Schoenhard
Ropes & Gray

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Verizon Wireless and Motorola Raise the Bar with DROID BIONIC™ by Motorola

Unsurpassed power, speed and entertainment on the fastest, most advanced 4G LTE network in America

BASKING RIDGE, N.J., and LIBERTYVILLE, Ill. - Sept. 7, 2011 - Verizon Wireless and Motorola Mobility, Inc. (NYSE: MMI), today announced DROID BIONIC™ by Motorola will be exclusively available beginning Sept. 8.

DROID BIONIC is the first Verizon Wireless smartphone to combine 4G LTE with the power of dual-core 1 GHz processors, 1 GB of RAM and a stunning 4.3-inch qHD display – all in a sleek form factor that makes it the thinnest 4G LTE smartphone from Verizon Wireless. Customers can expect to fly across the Web on the Verizon Wireless 4G LTE network with download speeds of 5 to 12 Mbps and upload speeds of 2 to 5 Mbps in 4G LTE mobile broadband coverage areas.

DROID BIONIC introduces a host of groundbreaking applications and accessories that turn the device into a multimedia hub, a ruler of remote access and a purveyor of virtuality. DROID BIONIC introduces ZumoCast™ by Motorola, an application that lets customers bring their digital world of videos, music, pictures and documents stored on their computers to their handset via remote access. With its revolutionary Webtop application, DROID BIONIC can beam a full-featured Firefox® Web browser 4.0, email or documents to a TV or monitor, like the separately purchased Lapdock™ with a 11.6" screen, keyboard and integrated trackpad.

Accessories such as the HD Station let DROID BIONIC users turn the phone into an entertainment center or home office. Customers can view pictures, video, and content from the DROID BIONIC on any HDTV or monitor by connecting a separately sold HDMI cable. They can also take a conference call while editing documents and surfing the Web. And, of course, the DROID BIONIC lets customers share their 4G LTE signal with up to five Wi-Fi-enabled devices when they activate the Verizon Wireless Mobile Hotspot. The device of the future today, the DROID BIONIC also includes the following features:

- Powered by Android™ 2.3.4 Gingerbread
- Dual-core 1 GHz processor and 1 GB of RAM
- 4.3-inch qHD screen using scratch-resistant Corning® Gorilla® Glass with dual-layer anti-reflective coating
- 8-megapixel autofocus camera with flash and 1080p HD video capture
- Front-facing camera for video chat over 4G LTE, 3G or Wi-Fi
- MOTOPRINT app to print via Wi-Fi-enabled printers
- Mirror Mode with HDMI out (HDMI cable required) supporting 1080p HD video playback
- Multi-window options for multitasking with ease when using the Webtop application
- Business Ready with advanced security policies; resizable and scrollable email, calendar and task widgets; device and SD card encryption; and Citrix® GotoMeeting® and Citrix Receiver™ for Android
- Adobe® Flash® pre-loaded
- HTML 5 capable
- 32 GB memory: 16 GB on board and 16 GB microSD™ card pre-installed (actual formatted capacity is less)
- Support for up to 32 GB microSD cards
- Supports wireless charger

Pricing and availability:

- DROID BIONIC by Motorola will be available in Verizon Wireless Communication Stores and online at www.verizonwireless.com on Sept. 8 for \$299.99 with a new two-year customer agreement.
- Customers will need to subscribe to a Verizon Wireless Nationwide Talk plan beginning at \$39.99 for 450 minutes per month and a smartphone data package starting at \$30 monthly access for 2 GB of data.
- Verizon Wireless Mobile Hotspot data plans are available beginning at \$30 for 2 GB.
- For a limited time, customers who purchase a Lapdock with the DROID BIONIC can receive a \$100 mail-in rebate when subscribing to a \$50, 5 GB data plan or higher.

Available accessories:

- The Lapdock will be available for \$299.97, the HD Station will be available for \$99.99 and the Adapter for Webtop Application will be available for \$29.99.
- Vehicle Navigation Dock delivers easy access to maps, favorite contacts, hands-free calling, music, navigation and more and supports streaming of audio and music via the 3.5 mm audio jack, if available, to play through vehicle speakers. The Vehicle Navigation Dock will be available for \$39.99.
- The Battery Dock with standard battery is a pocket-sized accessory with an extra battery included to charge both DROID BIONIC and an extra battery at the same speed as a wall charger. The Battery Dock will be available for \$49.99.

For more information on Verizon Wireless products and services, visit a Verizon Wireless Communications Store, call 1-800-2 JOIN IN or go to www.verizonwireless.com. For more information on accessories, visit www.verizonwireless.com/accessories.

About Motorola Mobility

Motorola Mobility, Inc. (NYSE:MMI) fuses innovative technology with human insights to create experiences that simplify, connect and enrich people's lives. Our portfolio includes converged mobile devices such as smartphones and tablets; wireless accessories; end-to-end video and data delivery; and management solutions, including set-tops and data-access devices. For more information, visit motorola.com/mobility.

Media Contacts:

Kira Golin
kira@motorola.com
Motorola Mobility, Inc.

About Verizon Wireless

Verizon Wireless operates the nation's fastest, most advanced 4G network and largest, most reliable 3G network. The company serves 106.3 million total wireless connections, including 89.7 million retail customers. Headquartered in Basking Ridge, N.J., with 83,000 employees nationwide, Verizon Wireless is a joint venture of Verizon Communications (NYSE, NASDAQ: VZ) and Vodafone (LSE, NASDAQ: VOD). For more information, visit www.verizonwireless.com. To preview and request broadcast-quality video footage and high-resolution stills of Verizon Wireless operations, log on to the Verizon Wireless Multimedia Library at www.verizonwireless.com/multimedia.

Media Contacts

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Albert.Aydin@verizonwireless.com

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HONORABLE JAMES L. ROBART

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICROSOFT CORPORATION,

Plaintiff,

v.

MOTOROLA, INC., et al.,

Defendants.

No. C10-1823-JLR

MOTOROLA MOBILITY, INC., et al.,

Plaintiffs,

v.

MICROSOFT CORPORATION,

Defendant.

DEFENDANT AND CROSS-PLAINTIFF MICROSOFT CORPORATION'S FIRST
AMENDED ASSERTED CLAIMS AND PRELIMINARY INFRINGEMENT
CONTENTIONS

Defendant Microsoft Corporation (“Microsoft”) provides to Plaintiffs Motorola Mobility, Inc. (“Motorola Mobility”), Motorola Inc., (n/k/a “Motorola Solutions”) and General Instrument Corporation (“General Instrument”) (collectively, “Motorola”) the following First Amended Asserted Claims and Preliminary Infringement Contentions in compliance with the Court’s Standing Order for Patent Cases and with the Minute Order Setting Trial Dates and Related Dates dated August 5, 2011. Microsoft reserves the right to amend this disclosure to conform to the results of ongoing discovery.

(1) The identity of each claim alleged to be infringed

U.S. Patent No. 6,339,780 (“the ‘780 Patent”): Claims 1-6, 9-14, 17, 18, 20, 21, and 32-42.

U.S. Patent No. 7,411,582 (“the ‘582 Patent”): Claims 1-4, 6, 8-11, 13-23, 25-31.

These claims will be hereinafter referred to as the “Microsoft Asserted Claims.” Microsoft’s investigation as to Motorola’s infringement is ongoing. Accordingly, Microsoft reserves the right to assert more or fewer claims based on further information that may become available during ongoing discovery.

(2) The identity of Motorola’s accused devices by specific name and model number for each asserted claim

Motorola Mobility is currently accused of infringing some or all of the Microsoft Asserted Claims by making, using, selling, offering to sell, and/or importing the following products, hereinafter referred to as the Accused Motorola Devices:

The ‘780 Patent	The ‘582 Patent
Atrix ME860, MB861	Atrix ME860, MB861
Bravo MB520	Bravo MB520

The '780 Patent	The '582 Patent
Charm MB502, ME502	
	Citrus WX445
	Cliq XT MB501
Cliq 2 MB611	Cliq 2 MB611
Defy MB525	Defy MB525
Devour A555	
Droid A855	Droid A855
Droid 2 A955	Droid 2 A955
Droid 2 Global A956	Droid 2 Global A956
Droid 3 XT862	Droid 3 XT862
Droid Bionic XT875	Droid Bionic XT875
Droid Pro XT610	Droid Pro XT610
Droid X MB810	Droid X MB810
Droid X2 MB870	Droid X2 MB870
Flipout MB511	Flipout MB511
Flipside MB508	Flipside MB508
	i1
Photon 4G MB855	Photon 4G MB855
Spice XT300	
Titanium	Titanium

The '780 Patent	The '582 Patent
Triumph WX435	Triumph WX435
XPRT MB612	
Xoom MZ600, MZ601, MZ603, MZ604, MZ605, MZ606 (except as to Claims 6, 33, and 39).	

Microsoft's investigation as to Motorola's infringement is ongoing. Accordingly, Microsoft reserves the right to amend the list of Accused Motorola Devices based on further information that may become available during ongoing discovery.

(3) A chart that identifies specifically where each element of each asserted claim is found within each accused device/method/etc.

Microsoft accuses Motorola Mobility of having infringed, induced the infringement of and/or contributorily infringed, and continuing to infringe, induce infringement of and/or contributorily infringe the Microsoft Asserted Claims pursuant to 35 U.S.C. § 271 (a), (b) and/or (c), literally or under the doctrine of equivalents, in the United States, by making, using, selling, offering to sell and/or importing the Accused Motorola Devices. Infringement charts for the '780 patent, containing evidence of direct and indirect infringement, are attached as Exhibit A. Infringement charts for the '582 patent, containing evidence of direct and indirect infringement, are attached as Exhibit B.

(4) Whether each asserted claim is literally or equivalently infringed

Microsoft reserves the right to assert infringement under the doctrine of equivalents for any limitation of the '780 or '582 patents that Motorola contends is not literally present in its Accused Devices. Microsoft further reserves the right to assert infringement under the doctrine of equivalents based on a claim construction ruling on any disputed claim terms and/or based on further information that may become available during ongoing discovery.

(5) The priority date to which each asserted claim allegedly is entitled

The '780 Patent: The priority date for each claim of the '780 patent asserted in Section (2) above is the earliest effective filing date on the face of the patent: May 6, 1997.

The '582 Patent: The priority date for each claim of the '582 patent asserted in Section (2) above is the priority date of U.S. Patent Application Ser. No 08/991,277, to which the patent claims priority ('582 patent, 1:6-8): December 16, 1997.

Microsoft's investigation as to conception of the inventions disclosed in both the '582 and '780 patents is ongoing. Accordingly, Microsoft reserves the right to amend this priority date based on further information that may become available during ongoing discovery.

DATED this ___ day of October, 2011.

DANIELSON HARRIGAN LEYH & TOLLEFSON LLP

By _____

Arthur W. Harrigan, Jr., WSBA #1751
Christopher Wion, WSBA #33207
Shane P. Cramer, WSBA #35099

T. Andrew Culbert, WSBA #35925
David E. Killough, WSBA #40185

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17 Washington, DC 20005
18 Telephone: 202-736-8000
19 Fax: 202-736-8711

20 Counsel for Microsoft Corporation
21
22
23
24
25

CERTIFICATE OF SERVICE

I hereby certify that on October __, 2011, I served a true and correct copy of Defendant and Cross-Plaintiff Microsoft Corporation's Asserted Claims and Preliminary Infringement Contentions via electronic mail on the counsel of record below.

Attorneys for Defendants Motorola Solutions, Inc., Motorola Mobility, Inc., and General Instrument Corporation

Philip S. McCune
Lynn M. Engle
Summit Law Group

Steven Pepe
Jesse J. Jenner
Norman Beamer
Paul M. Schoenhard
Ropes & Gray

EXHIBIT 9

Yothers, Stuart

From: Phil McCune [philm@SummitLaw.com]
Sent: Wednesday, October 26, 2011 1:48 PM
To: 'Chris Wion'
Subject: RE: Msft's proposed Motion for Leave to Amend Infringement Contentions

Chris:

Because it is early in the case, Motorola expected that the parties would agree on reasonable amendments to the preliminary contentions, particularly where the amendments are based on newly discovered information. Having evaluated Microsoft's request from that perspective, Motorola will not oppose Microsoft's motion to amend its infringement contentions to add the Bionic.

Motorola is curious about the grounds on which Microsoft plans to oppose Motorola's motion to amend Motorola's invalidity contentions to include newly discovered prior art materials. Motorola expected that motion to be addressed by Microsoft with the same nonopposition Motorola has provided Microsoft. Similar to Microsoft's request, Motorola raised this with Microsoft well in advance of claim construction or any other substantive proceedings in this case.

Motorola asks that Microsoft reconsider its opposition, or, at the very least, provide the substantive basis for its opposition that would distinguish the issue from its own recent request for nonopposition to a request for amendment. After understanding that basis, Motorola can attempt to spare the court a briefing exercise by resolving this issue through a meet-and-confer.

Best regards,

Phil

Phil McCune, Member | SUMMIT LAW GROUP PLLC
315 Fifth Avenue South, Suite 1000 | Seattle, Washington 98104-2682
T 206.676.7038 | F 206.676.7039 | philm@summitlaw.com | www.summitlaw.com

From: Chris Wion [mailto:chrisw@dhl.com]
Sent: Tuesday, October 25, 2011 10:06 PM
To: Phil McCune
Subject: RE: Msft's proposed Motion for Leave to Amend Infringement Contentions

Phil,

Microsoft's position is that Motorola's request should not be granted.

-Chris

-----Original Message-----

From: Phil McCune [mailto:philm@SummitLaw.com]
Sent: Tuesday, October 25, 2011 6:00 PM
To: Chris Wion
Subject: RE: Msft's proposed Motion for Leave to Amend Infringement Contentions

Chris:

Does Microsoft intend to oppose Motorola's request? That may be relevant to answering your question and I would like to know before I discuss your question with Motorola.

Best regards,

Phil

Phil McCune, Member / Summit Law Group PLLC

315 Fifth Avenue South, Suite 1000 | Seattle, Washington 98104-2682

T 206.676.7038 | F 206.676.7039 | philm@summitlaw.com | www.summitlaw.com

From: Chris Wion [mailto:chrisw@dhl.com]

Sent: Tuesday, October 25, 2011 5:18 PM

To: Phil McCune

Subject: FW: Msft's proposed Motion for Leave to Amend Infringement Contentions

Phil,

In response to your email yesterday, Microsoft is not inclined to alter its Motion for Leave to Amend Infringement Contentions to include Motorola's proposed language requesting leave to amend its invalidity contentions.

Please let me know as soon as possible whether Motorola intends to oppose Microsoft's Motion so that we can make any necessary adjustments prior to filing.

Thank you.

-Chris

From: Chris Wion

Sent: Friday, October 07, 2011 3:01 PM

To: Phil McCune (philm@SummitLaw.com)

Subject: Msft's proposed Motion for Leave to Amend Infringement Contentions

Phil,

As you are aware, the parties exchanged their preliminary infringement contentions on Sept. 2, 2011. We have become aware that Motorola began selling the Droid Bionic smartphone in the United States on Sept. 8, 2011, at earliest. We believe that the Bionic infringes the '780 and '582 patents. Because Motorola brought the Bionic to market after the parties' exchange of preliminary infringement contentions, we intend to amend our infringement contentions to add the Bionic as an accused product. Like the other 24 Motorola products we have accused, the Bionic is an Android device and therefore, we believe it infringes the '780 and '582 patents in substantially the same manner as the already accused products. As such, our amended infringement contentions directed toward the Bionic are substantially similar to the infringement theories we previously presented.

We've placed our amended materials at the following link for your review:

<https://signin.sidleyfiletransfer.com/fs/v.aspx?v=8a6d64895f66b7a97166>. We've included redline copies of the amended documents compared to the originals. Notice that the main contention charts are not updated; only the appendices relating to the Bionic are updated (or new, in the case of Appendix C-19).

Accordingly, we intend to move the Court for leave to amend our preliminary infringement contentions. A copy of our proposed Motion (with exhibits) is attached.

Because of the substantial similarities between the Bionic and the previously accused products and our timely efforts to update our contentions, we don't believe such an amendment will prejudice Motorola's arguments or defenses. Please confirm that Motorola will not oppose this motion. If Motorola does oppose this motion, please let me know when you are available to meet and confer so that we might understand Motorola's bases for opposition.

Thank you,

-Chris

Christopher T. Wion
Partner
Danielson Harrigan Leyh & Tollefson LLP
999 Third Avenue, Suite 4400
Seattle, Washington 98104
Tel: (206) 623-1700
Fax: (206) 623-8717

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EXHIBIT 10

Yothers, Stuart

From: Phil McCune [philm@SummitLaw.com]
Sent: Monday, October 17, 2011 9:07 PM
To: 'Chris Wion'
Cc: Yothers, Stuart; Marcia Ripley
Subject: Msft's proposed Motion for Leave to Amend Infringement Contentions
Attachments: Active_28366853_2_Stipulation and Joint Motion to Amend Prelim Infringement and Invalidity Contentions.DOCX; Active_28367169_1_Redline of Motion to Amend Contentions.DOCX

Chris:

Attached is a draft stipulation and joint motion to amend. We also include a proposed order and a redline against Microsoft's original proposal. Please let me know if Microsoft agrees to this proposal. You and I spoke about doing this as a pure stipulation and order. If the substance of these documents are approved, I recommend we do another revision to accomplish that.

Please note that Motorola dropped Microsoft's Exhibit B and instead inserted a statement that Microsoft provided Motorola with a copy of Microsoft's proposed amended Contentions, and that Motorola does not oppose.

Also, your October 7 email provides a link to Microsoft's amended materials. Unfortunately, I did not download those documents, which later became inaccessible from the link. Would you please repost those documents for Motorola's review prior to any filing? Thank you.

Finally, as noted in its preliminary infringement contentions, Motorola intends to supplement its infringement claim charts with citations to source code after Microsoft has produced for inspection the source code for the Accused Products. We expect that Microsoft will not oppose a motion to supplement with respect to source code at that time.

Best regards,

Phil

Phil McCune, Member | SUMMIT LAW GROUP PLLC

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----- Summit Law Group -----

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HONORABLE JAMES L. ROBART

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICROSOFT CORPORATION,
Plaintiff,

v.

MOTOROLA, INC., et al.,
Defendants.

No. C10-1823-JLR

**STIPULATION AND JOINT
MOTION FOR LEAVE TO AMEND
PRELIMINARY INFRINGEMENT
AND INVALIDITY CONTENTIONS**

Noted: Friday, October __, 2011

MOTOROLA MOBILITY, INC., et al.,
Plaintiffs,

v.

MICROSOFT CORPORATION,
Defendant.

**STIPULATION AND JOINT MOTION
FOR LEAVE TO AMEND PRELIMINARY
INFRINGEMENT AND INVALIDITY
CONTENTIONS**

LAW OFFICES
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1 Microsoft Corporation (“Microsoft”) and Motorola Mobility, Inc. (“Motorola
2 Mobility”), Motorola Inc., (n/k/a “Motorola Solutions”) and General Instrument Corporation
3 (“General Instrument”) (collectively, “Motorola”) hereby stipulate and jointly move for an
4 Order permitting Microsoft to amend its Asserted Claims and Preliminary Infringement
5 Contentions (“Infringement Contentions”) and permitting Motorola to amend its Invalidity
6 Contentions.

7 **I. Microsoft’s Request to Amend Its Infringement Contentions**

8 On September 2, 2011, Microsoft served its original Infringement Contentions on
9 Motorola pursuant to the Court’s Standing Order for Patent Cases and the Court’s August 5,
10 2011 Minute Order Setting Trial Dates and Related Dates. In those original Infringement
11 Contentions, Microsoft accused 24 of Motorola’s smartphone and tablet devices of infringing
12 U.S. Patents No. 6,339,780 and No. 7,411,582 (the “Microsoft Patents”).

13 Microsoft now moves for leave to amend its Infringement Contentions to include the
14 Motorola Droid Bionic XT875 (“Bionic”). In a Sept. 7, 2011 press release (attached as Exhibit
15 A), Motorola announced its plans to release the Bionic to the market the next day. The Bionic
16 runs the Android operating system, and consequently, Microsoft believes that the Bionic also
17 infringes the Microsoft Patents. Microsoft intends to include contentions relating to the Bionic
18 in its amended Infringement Contentions.

19 Microsoft has good cause to amend its Infringement Contentions. The Bionic was not
20 on the market when Microsoft filed its original Infringement Contentions on Sept. 2, 2011.
21 Microsoft learned of the Bionic’s market availability through Motorola’s public press
22 announcement, several days after the parties exchanged infringement contentions.
23 Furthermore, Microsoft contends that the Bionic shares strong similarities with the other 24
24 accused Motorola smartphone and tablet devices. Like the other accused devices, the Bionic
25 runs the Android operating system, which forms a substantial basis for Microsoft’s

**STIPULATION AND JOINT MOTION FOR
LEAVE TO AMEND PRELIMINARY
INFRINGEMENT AND INVALIDITY
CONTENTIONS - 1**

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1 Infringement Contentions. Given these strong similarities, the Bionic is a natural addition to
 2 this matter. Moreover, due to such similarities, Motorola will not be prejudiced by the addition
 3 of the Bionic to the case because the addition should not substantially affect any of Motorola's
 4 arguments or defenses.

5 Finally, this motion to amend is timely. It comes shortly after Motorola announced the
 6 Bionic's market availability (Sept. 7, 2011), well in advance of the deadline for exchange of
 7 Non-Infringement Contentions (Dec. 2, 2011), several months before the Markman hearing
 8 (Mar. 9, 2012), and more than a year before trial (November 26, 2012).

9 Microsoft has provided to Motorola a copy of its proposed First Amended Asserted
 10 Claims and Preliminary Infringement Contentions, and Motorola has agreed not to oppose
 11 Microsoft's request to amend its Infringement Contentions as set forth above.

12 **II. Motorola's Request to Amend Its Invalidity Contentions**

13 On September 30, 2011, Motorola served its Invalidity Contentions as a supplemental
 14 response to Microsoft's Interrogatory No. 11. With that response, Motorola provided claim
 15 charts setting forth how various references anticipate and/or render obvious Microsoft's U.S.
 16 Patent Nos. 6,339,780 ("the '780 patent") and 7,411,582 ("the '582 patent").

17 Motorola now moves for leave to amend its Invalidity Contentions. Since serving its
 18 Invalidity Contentions, Motorola discovered a new anticipatory reference for the '780 patent --
 19 Apple's HyperCard. Upon locating a video demonstrating the HyperCard product, Motorola
 20 produced to Microsoft a copy of the video and various screen shots of the HyperCard program.
 21 Motorola seeks to amend its Invalidity Contentions to provide Microsoft with a claim chart
 22 setting forth how the HyperCard product anticipates, or alternatively renders obvious, the '780
 23 patent.

24 Motorola has good cause to amend its Invalidity Contentions. At the time it served its
 25 original Invalidity Contentions, Motorola had not yet located the HyperCard materials that it

1 has since produced to Microsoft. Microsoft will not be prejudiced by Motorola's amendment,
2 because it comes shortly after Motorola's initial Invalidity Contentions (Sept. 30, 2011), and
3 well in advance of the deadline for exchange of Non-Infringement Contentions (Dec. 2, 2011),
4 several months before the Markman hearing (Mar. 9, 2012), and more than a year before trial
5 (November 26, 2012).

6 Microsoft has agreed not to oppose Motorola's request to amend its Invalidity
7 Contentions as set forth above.

8 **III. Conclusion**

9 Microsoft and Motorola have agreed that these amendments are timely and will not
10 prejudice the parties in developing their respective cases, nor will these amendments affect the
11 schedule set for this case by the Court. In light of the parties' agreement and the above-
12 described circumstances establishing good cause, the parties respectfully request that the Court
13 grant this motion, and enter an Order allowing (1) Microsoft to amend its Infringement
14 Contentions in order to include Motorola's Bionic smartphone as an additional accused
15 product; and (2) Motorola to amend its Invalidity Contentions in order to include an invalidity
16 chart for the '780 patent regarding the HyperCard reference.
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1 **AGREED AND STIPULATED TO:**

2 DANIELSON HARRIGAN LEYH &
3 TOLLEFSON LLP

4 By /s/ Christopher Wion
5 Arthur W. Harrigan, Jr., WSBA #1751
6 Christopher Wion, WSBA #33207
7 Shane P. Cramer, WSBA #35099

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16 David T. Pritikin, (*pro hac vice*)
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Fax: 202-736-8711

Counsel for Microsoft Corp.

DATED this ____ day of October, 2011.

**STIPULATION AND JOINT MOTION FOR
LEAVE TO AMEND PRELIMINARY
INFRINGEMENT AND INVALIDITY
CONTENTIONS - 4**

SUMMIT LAW GROUP PLLC

By /s/ Philip S. McCune
Philip S. McCune, WSBA #21081
Lynn M. Engel, WSBA #21934
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**Counsel for Motorola Solutions, Inc.,
Motorola Mobility, Inc., and General
Instrument, Corp.**

HONORABLE JAMES L. ROBART

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICROSOFT CORPORATION,

Plaintiff,

v.

MOTOROLA, INC., et al.,

Defendants.

No. C10-1823-JLR

PROPOSED ORDER

MOTOROLA MOBILITY, INC., et al.,

Plaintiffs,

v.

MICROSOFT CORPORATION,

Defendant.

Having considered the parties' Stipulation and Joint Motion For Leave To Amend Preliminary Infringement And Invalidity Contentions, the Court finds that good cause exists for (1) Microsoft to amend its Infringement Contentions to include the Motorola Droid Bionic XT875 as an accused product; and (2) Motorola to amend its Invalidity Contentions to include a claim chart for the HyperCard reference. It is therefore Ordered that within 5 days of this

**STIPULATION AND JOINT MOTION FOR
LEAVE TO AMEND PRELIMINARY
INFRINGEMENT AND INVALIDITY
CONTENTIONS - 5**

LAW OFFICES
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999 THIRD AVENUE, SUITE 4400
SEATTLE, WASHINGTON 98104
TEL, (206) 623-1700 FAX, (206) 623-8717

1 Order, Microsoft shall serve its Amended Infringement Contentions, and Motorola shall serve
2 its Amended Invalidity Contentions.

3 SO ORDERED.
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**STIPULATION AND JOINT MOTION FOR
LEAVE TO AMEND PRELIMINARY
INFRINGEMENT AND INVALIDITY
CONTENTIONS - 6**

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SEATTLE, WASHINGTON 98104
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CERTIFICATE OF SERVICE

I hereby certify that on October 7, 2011, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

Attorneys for Defendants Motorola Solutions, Inc., Motorola Mobility, Inc., and General Instrument Corporation

Philip S. McCune
Lynn M. Engle
Summit Law Group

Steven Pepe
Jesse J. Jenner
Norman Beamer
Paul M. Schoenhard
Ropes & Gray

LINDA BLEDSOE

**STIPULATION AND JOINT MOTION FOR
LEAVE TO AMEND PRELIMINARY
INFRINGEMENT AND INVALIDITY
CONTENTIONS - 7**

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HONORABLE JAMES L. ROBERT

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICROSOFT CORPORATION,

Plaintiff,

v.

MOTOROLA, INC., et al.,

Defendants.

No. C10-1823-JLR

~~(UNOPPOSED)~~ STIPULATION AND
JOINT MOTION FOR LEAVE TO
AMEND PRELIMINARY
INFRINGEMENT AND INVALIDITY
CONTENTIONS

Noted: Friday, October 7, 2011

MOTOROLA MOBILITY, INC., et al.,

Plaintiffs,

v.

MICROSOFT CORPORATION,

Defendant.

28366885-1
~~(UNOPPOSED)~~ STIPULATION AND
JOINT MOTION FOR LEAVE TO
AMEND PRELIMINARY
INFRINGEMENT AND INVALIDITY
CONTENTIONS

LAW OFFICES
DANIELSON HARRIGAN LEYH & TOLLEFSON LLP
999 THIRD AVENUE, SUITE 4400
SEATTLE, WASHINGTON 98104
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Microsoft Corporation ("Microsoft") ~~hereby moves, unopposed, for an Order permitting Microsoft to amend its Asserted Claims and Preliminary Infringement Contentions ("Infringement Contentions").~~ On September 2, 2011, Microsoft served its original Asserted Claims and Infringement Contentions on and Motorola Mobility, Inc. ("Motorola Mobility"), Motorola Inc., (n/k/a "Motorola Solutions") and General Instrument Corporation ("General Instrument") (collectively, "Motorola") hereby stipulate and jointly move for an Order permitting Microsoft to amend its Asserted Claims and Preliminary Infringement Contentions ("Infringement Contentions") and permitting Motorola to amend its Invalidity Contentions.

I. Microsoft's Request to Amend Its Infringement Contentions

On September 2, 2011, Microsoft served its original Infringement Contentions on Motorola pursuant to the Court's Standing Order for Patent Cases and the Court's August 5, 2011 Minute Order Setting Trial Dates and Related Dates. In those original Infringement Contentions, Microsoft accused 24 of Motorola's smartphone and tablet devices of infringing U.S. Patents No. 6,339,780 and No. 7,411,582 (the "Microsoft Patents").

Microsoft now moves for leave to amend its Infringement Contentions to include the Motorola Droid Bionic XT875 ("Bionic"). In a Sept. 7, 2011 press release (attached as Exhibit A), Motorola announced its plans to release the Bionic to the market the next day. The Bionic runs the Android operating system, and consequently, Microsoft believes that the Bionic also infringes the Microsoft Patents. Microsoft intends to include contentions relating to the Bionic in its amended Infringement Contentions.

Microsoft has good cause to amend its Infringement Contentions. The Bionic was not on the market when Microsoft filed its original Infringement Contentions on Sept. 2, 2011. Microsoft learned of the Bionic's market availability through Motorola's public press announcement, several days after the parties exchanged infringement contentions. Furthermore, Microsoft contends that the Bionic shares strong similarities with the other 24 accused Motorola

28366885-1
~~(UNOPPOSED)~~ STIPULATION AND JOINT
MOTION FOR LEAVE TO AMEND
PRELIMINARY INFRINGEMENT AND
INVALIDITY CONTENTIONS - 1

1 smartphone and tablet devices. Like the other accused devices, the Bionic runs the Android
 2 operating system, which forms a substantial basis for Microsoft's Infringement Contentions.
 3 Given these strong similarities, the Bionic is a natural addition to this matter. Moreover, due to
 4 such similarities, Motorola will not be prejudiced by the addition of the Bionic to the case
 5 because the addition should not substantially affect any of Motorola's arguments or defenses.

6 ~~Indeed, Motorola does not oppose Microsoft's motion to amend its Infringement Contentions.~~

7
 8 Finally, this motion to amend is timely. It comes shortly after Motorola announced the
 9 Bionic's market availability (Sept. 7, 2011), well in advance of the deadline for exchange of
 10 Non-Infringement Contentions (Dec. 2, 2011), several months before the Markman hearing
 11 (Mar. 9, 2012), and more than a year before trial (November 26, 2012).

12 ~~Counsel for Motorola has advised that Motorola does not intend to oppose this Motion.~~
 13 ~~In light of Motorola's non-opposition and the above-described circumstances establishing good~~
 14 ~~cause, the Court should permit Microsoft to amend its Infringement Contentions in order to~~
 15 ~~include Motorola's Bionic smartphone as an additional accused product. Microsoft has included~~
 16 ~~the Bionic in its~~

17 Microsoft has provided to Motorola a copy of its proposed First Amended Asserted
 18 Claims and Preliminary Infringement Contentions, ~~pursuant to the Court's Standing Order for~~
 19 ~~Patent Cases. A copy of the cover sheet for the amended Infringement Contentions is attached~~
 20 ~~hereto as Exhibit B.~~

21 CONCLUSION

22 ~~Microsoft respectfully requests that the Court grant this motion, and enter an Order~~
 23 ~~allowing Microsoft to serve its First Amended Asserted Claims and Preliminary Infringement~~
 24 ~~Contentions, which include the Bionic as an additional accused product, and Motorola has agreed~~
 25 ~~not to oppose Microsoft's request to amend its Infringement Contentions as set forth above.~~

28366885-1
 26 ~~(UNOPPOSED)~~ STIPULATION AND JOINT
 MOTION FOR LEAVE TO AMEND
 PRELIMINARY INFRINGEMENT AND
INVALIDITY CONTENTIONS - 2

II. Motorola's Request to Amend Its Invalidity Contentions

On September 30, 2011, Motorola served its Invalidity Contentions as a supplemental response to Microsoft's Interrogatory No. 11. With that response, Motorola provided claim charts setting forth how various references anticipate and/or render obvious Microsoft's U.S. Patent Nos. 6,339,780 ("the '780 patent") and 7,411,582 ("the '582 patent").

Motorola now moves for leave to amend its Invalidity Contentions. Since serving its Invalidity Contentions, Motorola discovered a new anticipatory reference for the '780 patent -- Apple's HyperCard. Upon locating a video demonstrating the HyperCard product, Motorola produced to Microsoft a copy of the video and various screen shots of the HyperCard program. Motorola seeks to amend its Invalidity Contentions to provide Microsoft with a claim chart setting forth how the HyperCard product anticipates, or alternatively renders obvious, the '780 patent.

Motorola has good cause to amend its Invalidity Contentions. At the time it served its original Invalidity Contentions, Motorola had not yet located the HyperCard materials that it has since produced to Microsoft. Microsoft will not be prejudiced by Motorola's amendment, because it comes shortly after Motorola's initial Invalidity Contentions (Sept. 30, 2011), and well in advance of the deadline for exchange of Non-Infringement Contentions (Dec. 2, 2011), several months before the Markman hearing (Mar. 9, 2012), and more than a year before trial (November 26, 2012).

Microsoft has agreed not to oppose Motorola's request to amend its Invalidity Contentions as set forth above.

III. Conclusion

Microsoft and Motorola have agreed that these amendments are timely and will not prejudice the parties in developing their respective cases, nor will these amendments affect the schedule set for this case by the Court. In light of the parties' agreement and the above-described

28366885-1
~~(UNOPPOSED)~~ **STIPULATION AND JOINT**
MOTION FOR LEAVE TO AMEND
PRELIMINARY INFRINGEMENT AND
INVALIDITY CONTENTIONS - 3

1 circumstances establishing good cause, the parties respectfully request that the Court grant this
2 motion, and enter an Order allowing (1) Microsoft to amend its Infringement Contentions in
3 order to include Motorola's Bionic smartphone as an additional accused product; and (2)
4 Motorola to amend its Invalidity Contentions in order to include an invalidity chart for the '780
5 patent regarding the HyperCard reference.

25 28366885-1
~~(UNOPPOSED)~~ STIPULATION AND JOINT
MOTION FOR LEAVE TO AMEND
PRELIMINARY INFRINGEMENT AND
INVALIDITY CONTENTIONS - 4

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AGREED AND STIPULATED TO:

**DANIELSON HARRIGAN LEYH &
TOLLEFSON LLP**

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Christopher Wion, WSBA #33207
Shane P. Cramer, WSBA #35099

T. Andrew Culbert, WSBA #35925
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**Counsel for Motorola Solutions, Inc., Motorola
Mobility, Inc., and General Instrument, Corp.**

DATED this 7th day of October, 2011.

DANIELSON HARRIGAN LEYH & TOLLEFSON LLP

By /s/ Christopher Wion
Arthur W. Harrigan, Jr., WSBA #1751
Christopher Wion, WSBA #33207
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28366885-1
(UNOPPOSED) STIPULATION AND JOINT
MOTION FOR LEAVE TO AMEND
PRELIMINARY INFRINGEMENT AND
INVALIDITY CONTENTIONS - 5

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HONORABLE JAMES L. ROBERT

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

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Washington, DC 20005
Telephone: 202 736 8000
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MICROSOFT CORPORATION,

Plaintiff,

v.

No. C10-1823-JLR

28366885-1
~~(UNOPPOSED)~~ STIPULATION AND JOINT
MOTION FOR LEAVE TO AMEND
PRELIMINARY INFRINGEMENT AND
INVALIDITY CONTENTIONS - 6

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MOTOROLA, INC., et al.,

Defendants,

PROPOSED ORDER

MOTOROLA MOBILITY, INC., et al.,

Plaintiffs,

v.

MICROSOFT CORPORATION,

Defendant.

~~Counsel for Microsoft Corporation~~

Having considered the parties' Stipulation and Joint Motion For Leave To Amend Preliminary Infringement And Invalidity Contentions, the Court finds that good cause exists for (1) Microsoft to amend its Infringement Contentions to include the Motorola Droid Bionic XT875 as an accused product; and (2) Motorola to amend its Invalidity Contentions to include a claim chart for the HyperCard reference. It is therefore Ordered that within 5 days of this Order, Microsoft shall serve its Amended Infringement Contentions, and Motorola shall serve its Amended Invalidity Contentions.

SO ORDERED.

~~28366885-1~~
~~(UNOPPOSED)~~ **STIPULATION AND JOINT**
MOTION FOR LEAVE TO AMEND
PRELIMINARY INFRINGEMENT AND
INVALIDITY **CONTENTIONS - 7**

LAW OFFICES
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CERTIFICATE OF SERVICE

I hereby certify that on October 7, 2011, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

Attorneys for Defendants Motorola Solutions, Inc., Motorola Mobility, Inc., and General Instrument Corporation

Philip S. McCune
Lynn M. Engle
Summit Law Group

Steven Pepe
Jesse J. Jenner
Norman Beamer
Paul M. Schoenhard
Ropes & Gray

LINDA BLEDSOE

28366885-1
~~(UNOPPOSED)~~ STIPULATION AND JOINT
MOTION FOR LEAVE TO AMEND
PRELIMINARY INFRINGEMENT AND
INVALIDITY CONTENTIONS - 8

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Document comparison by Workshare Professional on Monday, October 17, 2011
6:15:08 PM

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Document 1 ID	interwovenSite://RGDMS/Active/28366885/1
Description	#28366885v1<Active> - 10 07 11 Microsoft 1823 Unopposed Motion Amend Prelim Infring Contentions
Document 2 ID	interwovenSite://RGDMS/Active/28366853/2
Description	#28366853v2<Active> - Stipulation and Joint Motion to Amend Prelim Infringement and Invalidity Contentions
Rendering set	standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	108
Deletions	48
Moved from	4
Moved to	4
Style change	0
Format changed	0
Total changes	164

EXHIBIT 11

Yothers, Stuart

From: Chris Wion [mailto:chrisw@dhl.com]
Sent: Wednesday, October 26, 2011 12:50 PM
To: Phil McCune
Subject: RE: Msft's proposed Motion for Leave to Amend Infringement Contentions

Phil,

Microsoft does not believe that the two situations are comparable. Microsoft is seeking to add the Bionic now because that product was first introduced after the deadline for Microsoft's infringement contentions. In contrast, any prior art, by definition, existed long before Motorola's invalidity contentions were due. Thus, unlike Microsoft, Motorola had the ability to timely identify such prior art in accordance with the Local Patent Rules and Judge Robart's scheduling order. We would be happy to discuss this further as you suggest, during the November 1 meet and confer proposed in our discovery letter sent earlier today.

-Chris

From: Phil McCune [mailto:philm@SummitLaw.com]
Sent: Wednesday, October 26, 2011 10:48 AM
To: Chris Wion
Subject: RE: Msft's proposed Motion for Leave to Amend Infringement Contentions

Chris:

Because it is early in the case, Motorola expected that the parties would agree on reasonable amendments to the preliminary contentions, particularly where the amendments are based on newly discovered information. Having evaluated Microsoft's request from that perspective, Motorola will not oppose Microsoft's motion to amend its infringement contentions to add the Bionic.

Motorola is curious about the grounds on which Microsoft plans to oppose Motorola's motion to amend Motorola's invalidity contentions to include newly discovered prior art materials. Motorola expected that motion to be addressed by Microsoft with the same nonopposition Motorola has provided Microsoft. Similar to Microsoft's request, Motorola raised this with Microsoft well in advance of claim construction or any other substantive proceedings in this case.

Motorola asks that Microsoft reconsider its opposition, or, at the very least, provide the substantive basis for its opposition that would distinguish the issue from its own recent request for nonopposition to a request for amendment. After understanding that basis, Motorola can attempt to spare the court a briefing exercise by resolving this issue through a meet-and-confer.

Best regards,

Phil

Phil McCune, Member / Summit Law Group PLLC
315 Fifth Avenue South, Suite 1000 | Seattle, Washington 98104-2682
T 206.676.7038 | F 206.676.7039 | philm@summitlaw.com | www.summitlaw.com

From: Chris Wion [mailto:chrisw@dhl.com]
Sent: Tuesday, October 25, 2011 10:06 PM
To: Phil McCune
Subject: RE: Msft's proposed Motion for Leave to Amend Infringement Contentions

Phil,

Microsoft's position is that Motorola's request should not be granted.

-Chris

-----Original Message-----

From: Phil McCune [mailto:philm@SummitLaw.com]
Sent: Tuesday, October 25, 2011 6:00 PM
To: Chris Wion
Subject: RE: Msft's proposed Motion for Leave to Amend Infringement Contentions

Chris:

Does Microsoft intend to oppose Motorola's request? That may be relevant to answering your question and I would like to know before I discuss your question with Motorola.

Best regards,

Phil

Phil McCune, Member / Summit Law Group PLLC
315 Fifth Avenue South, Suite 1000 | Seattle, Washington 98104-2682
T 206.676.7038 | F 206.676.7039 | philm@summitlaw.com | www.summitlaw.com

From: Chris Wion [mailto:chrisw@dhl.com]
Sent: Tuesday, October 25, 2011 5:18 PM
To: Phil McCune
Subject: FW: Msft's proposed Motion for Leave to Amend Infringement Contentions

Phil,

In response to your email yesterday, Microsoft is not inclined to alter its Motion for Leave to Amend Infringement Contentions to include Motorola's proposed language requesting leave to amend its invalidity contentions.

Please let me know as soon as possible whether Motorola intends to oppose Microsoft's Motion so that we can make any necessary adjustments prior to filing.

Thank you.

-Chris

From: Chris Wion
Sent: Friday, October 07, 2011 3:01 PM

To: Phil McCune (philm@SummitLaw.com)

Subject: Msft's proposed Motion for Leave to Amend Infringement Contentions

Phil,

As you are aware, the parties exchanged their preliminary infringement contentions on Sept. 2, 2011. We have become aware that Motorola began selling the Droid Bionic smartphone in the United States on Sept. 8, 2011, at earliest. We believe that the Bionic infringes the '780 and '582 patents. Because Motorola brought the Bionic to market after the parties' exchange of preliminary infringement contentions, we intend to amend our infringement contentions to add the Bionic as an accused product. Like the other 24 Motorola products we have accused, the Bionic is an Android device and therefore, we believe it infringes the '780 and '582 patents in substantially the same manner as the already accused products. As such, our amended infringement contentions directed toward the Bionic are substantially similar to the infringement theories we previously presented.

We've placed our amended materials at the following link for your review:

<https://signin.sidleyfiletransfer.com/fs/v.aspx?v=8a6d64895f66b7a97166>. We've included redline copies of the amended documents compared to the originals. Notice that the main contention charts are not updated; only the appendices relating to the Bionic are updated (or new, in the case of Appendix C-19).

Accordingly, we intend to move the Court for leave to amend our preliminary infringement contentions. A copy of our proposed Motion (with exhibits) is attached.

Because of the substantial similarities between the Bionic and the previously accused products and our timely efforts to update our contentions, we don't believe such an amendment will prejudice Motorola's arguments or defenses. Please confirm that Motorola will not oppose this motion. If Motorola does oppose this motion, please let me know when you are available to meet and confer so that we might understand Motorola's bases for opposition.

Thank you,

-Chris

Christopher T. Wion

Partner

Danielson Harrigan Leyh & Tollefson LLP

999 Third Avenue, Suite 4400

Seattle, Washington 98104

Tel: (206) 623-1700

Fax: (206) 623-8717

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----- Summit Law Group -----

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EXHIBIT 12

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PLAY VISIONS, INC.,

Plaintiff,

v.

DOLLAR TREE STORES, INC., and
GREENBRIER INTERNATIONAL,
INC.,

Defendants.

CASE NO. C09-1769 MJP

ORDER GRANTING MOTION TO
AMEND PRELIMINARY
INVALIDITY CONTENTIONS

This matter comes before the Court on Defendants' motion to amend their preliminary invalidity contentions. (Dkt. No. 42.) Having reviewed the motion, the response (Dkt. No. 45), the reply (Dkt. No. 48), and all supporting papers, the Court GRANTS the motion. The Court also GRANTS Defendants' motion to STRIKE and does not consider the overlength portion of Plaintiff's response brief.

Background

Plaintiff Play Visions, Inc. has filed suit against Defendants for patent infringement. The scheduling order of this Court required Defendants to file preliminary non-infringement and

invalidity contentions by August 4, 2010. (Dkt. No. 10.) Defendants filed non-infringement contentions on that date, stating that they had no invalidity contentions, but reserved the right to present such contentions “as they are discovered or developed.” (Dkt. No. 43-2 at 3.) On October 1, 2010, Defendants served Play Visions with supplemental interrogatory responses in which they disclosed several prior art references. (Dkt. No. 43-3.) Five days later, Defendants served preliminary invalidity contentions to Plaintiff. (Dkt. No. 43-4.) On October 14, 2010, Defendants filed a motion to amend their non-infringement and invalidity contentions. Claims construction is scheduled for January 3, 2011. (Dkt. No. 10.) Discovery ends on March 21, 2011. (*Id.*) Trial is set for July 18, 2011. (*Id.*)

Analysis

A. Amendment

Defendants seek leave to file amended preliminary invalidity contentions pursuant to Local Patent Rule 124. The Court agrees.

Local Patent Rule 124 permits amendment of invalidity contentions “only by order of the Court upon a timely showing of good cause.” Examples of good cause are stated in the rule as

(a) a claim construction by the Court different from that proposed by the party seeking amendment; (b) recent discovery of material prior art despite earlier diligent search; and (c) recent discovery of nonpublic information about the Accused Device which was not discovered, despite diligent efforts, before the service of the Infringement Contentions. The duty to supplement discovery responses does not excuse the need to obtain leave of court to amend contentions.

Local Patent Rule LR 124. Restrictions on amendment to invalidity contentions are aimed at avoiding the “shifting sands” approach to claim construction. See Halo Elecs., Inc. v. Bel Fuse Inc., 2010 WL 3489593, at *1 (N.D. Cal. Sept. 3, 2010) (granting motion for leave to amend invalidity contentions where the defendants argued they searched diligently over a broad spectrum of prior art). The burden to show diligence is on Defendants in this case. *Id.*

1
2 Defendants rely on Quantum Corp. v. Riverbed Tech., Inc., No. C07-04161 WHA, 2008
3 U.S. Dist LEXIS 53632 (N.D. Cal. July 15, 2008). In Quantum, the defendant filed no invalidity
4 contention, but sought leave to file such contentions after its expert witness advised it of
5 particular prior art. Id. at *4. The Court found that the posture of the case was early, given that
6 only six months had passed since the defendant filed its counterclaim and that there had been no
7 claim construction and no depositions had been taken. Id. at *5.

8 Defendants have shown good cause. Similar to the facts in Quantum, claim construction
9 will not occur until after January, discovery does not end until March 2011, and Defendants
10 moved to amend the invalidity contentions roughly two months after the deadline to file them.
11 Defendants explain the delay is a result of a broad investigation that yielded newly obtained
12 evidence. (Dkt. No. 42 at 7.) They have shown reasonable diligence in providing these
13 invalidity contentions, despite Plaintiff's argument to the contrary. For example, Plaintiff argues
14 that Defendants had over seven months to conduct this search from the time the case was filed.
15 This ignores that Plaintiff's Fifth Amended Complaint wasn't filed until June 2010, and that the
16 motion to amend was filed roughly two months after the deadline passed. Good cause exists to
17 permit amendment.

18 Plaintiff also argues that Defendants have engaged in gamesmanship and that they are
19 "destroy[ing] the reason for having local patent rules." (Dkt. No. 45 at 11.) This hyperbole does
20 not convince the Court of Plaintiff's position. Defendants attest in their motion that they were
21 diligently pursuing their invalidity contentions and moved to amend at the earliest moment.
22 There is no evidence of gamesmanship, particularly given the short time it took Defendants to
23 amend their invalidity contentions and the early posture of the case.
24

1 Plaintiff also argues that it will suffer prejudice if Defendants are allowed amendment.
2 There is no evidence of prejudice given that the parties have yet to engage in claims construction
3 and discovery does not end for months. The Court does not consider Plaintiff's other arguments
4 of prejudice, as they are contained in the overlength portions of the brief which the Court strikes.
5 See infra.

6 The Court therefore GRANTS the motion and GRANTS Defendants leave to file their
7 amended preliminary invalidity contentions.

8 B. Motion to Strike

9 Defendants ask the Court to strike the overlength portion of Plaintiff's response brief.
10 The Court agrees. The response is 14 pages, when it should have been 12. Local Rule CR 7(e).
11 The Court STRIKES and does not consider the final two pages of Plaintiff's opposition. The
12 Court notes, too, that Plaintiff has used lengthy footnotes in what appears to be a further effort to
13 skirt the page limitation. If matters are sufficiently important for the Court's attention, they
14 should be placed in the body of the argument, not in footnotes.

15 The Court also advises Plaintiff that it failed to submit courtesy copies of its filings in this
16 matter that were over 50 pages. (See Dkt. No. 46.) The Local Civil Rules require that any filing
17 over 50 pages must be accompanied by courtesy copies delivered to the Clerk's Office for
18 chambers. Local Rule CR 10(e)(8).

19 **Conclusion**

20 The Court GRANTS the motion to amend. Defendants have shown diligence in pursuing
21 amendments to their preliminary invalidity contentions and there is no evidence of prejudice to
22 Plaintiff in the face of amendment. The Court GRANTS Defendants' motion to strike and
23 STRIKES the final two pages of Plaintiff's response brief.
24

1 The clerk is ordered to provide copies of this order to all counsel.

2 Dated this 30th day of November, 2010.

3
4 

5 Marsha J. Pechman
6 United States District Judge
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EXHIBIT 13

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

**CERTAIN HANDHELD ELECTRONIC
COMPUTING DEVICES, RELATED
SOFTWARE, AND COMPONENTS
THEREOF**

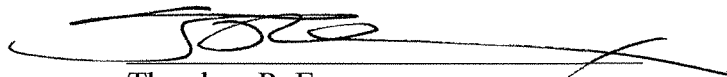
Inv. No. 337-TA-769

ORDER NO. 4: SETTING THE PROCEDURAL SCHEDULE

(June 17, 2011)

On June 16, 2011, the parties submitted a joint proposed procedural schedule pursuant to Order No. 3. The investigation will hereby be controlled by the procedural schedule attached hereto as Attachment A.

SO ORDERED.

A handwritten signature in black ink, appearing to read 'Theodore R. Essex', is written over a horizontal line.

Theodore R. Essex
Administrative Law Judge

ATTACHMENT A

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C. 20436

Before the Honorable Theodore R. Essex
Administrative Law Judge

In the Matter of CERTAIN HANDHELD ELECTRONIC COMPUTING DEVICES, RELATED SOFTWARE, AND COMPONENTS THEREOF	Investigation No. 337-TA-769
--	------------------------------

JOINT PROPOSED PROCEDURAL SCHEDULE

Pursuant to Order No. 3, Complainant Microsoft Corporation ("Microsoft"), Respondents Barnes and Noble, Inc. and barnesandnoble.com LLC ("Barnes & Noble"), Hon-Hai Precision Industry Co., Ltd., Foxconn Electronics, Inc., Foxconn Precision Component (Shenzhen) Co. Ltd., and Foxconn International Holdings, Ltd. ("Foxconn"), Inventec Corporation ("Inventec"), and Commission Investigative Staff ("Staff") respectfully submit the following Joint Proposed Procedural Schedule:

Event Description	Proposed Schedule
Settlement Meeting #1	On or before 7/29/11
Report re Settlement Meeting #1	8/8/11
File Identification of Expert Witnesses	9/23/11
File Notice of Prior Art	10/7/11
Exchange of Initial Expert Reports	10/21/11
File Tentative List of Hearing Witnesses	10/24/11
Settlement Meeting #2	On or before 11/4/11
Fact Discovery Cut-Off and Completion	11/14/11
Exchange of Rebuttal Expert Reports	11/16/11
Last Day to Supplement Responses to Contention Interrogatories	11/16/11
Report re: Settlement Meeting #2	11/18/11
Deadline for Motions to Compel Discovery	12/5/11
Expert Discovery Cut-Off and Completion	12/6/11
Deadline for Filing Summary Determination Motions	12/7/11
Settlement Meeting #3	On or before 12/15/11

Event Description	Proposed Schedule
Report re: Settlement Meeting #3	12/22/11
Exchange Exhibit Lists	12/22/11
Submit and Serve Direct Exhibits-Parties	1/6/2012
File Pre-Hearing Briefs-Parties	1/11/12
File Request for Receipt of Evidence without a Witness	1/11/12
File Objections to Direct Exhibits	1/13/12
Submit and Serve Direct Exhibits-Staff	1/18/12
Submit Rebuttal Exhibits	1/18/12
Deadline for Motions In Limine	1/20/12
File Responses to Objections to Direct Exhibits	1/20/12
File High-Priority Objections Statement	1/23/12
File Pre-Hearing Briefs-Staff	1/23/12
File Objections to Rebuttal Exhibits	1/25/12
File Responses to Motions In Limine	1/27/12
File Responses to High-Priority Objections Statement	1/30/12
File Response to Objections to Rebuttal Exhibits	1/30/12
Submission of Declarations Justifying Confidentiality of Exhibits	1/30/12
Prehearing Conference and Tutorial (if necessary)	2/6/12
Hearing Begins	2/6/12
Hearing Ends	2/15/12
File Initial Post-hearing Brief, Proposed Findings and Conclusions and Final Exhibit List	2/29/12
File Reply Post-Hearing Briefs, Objections and Rebuttal to Proposed Findings of Fact	3/14/12

Dated: June 16, 2011

Respectfully submitted,

/s/ V. James Adduci II

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 Andrew F. Pratt
 Jonathan J. Engler
 David H. Hollander, Jr.
 Rowan E. Morris
 ADDUCI, MASTRIANI & SCHAUMBERG, LLP
 1200 Seventeenth Street, NW, Fifth Floor
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 Telephone: (202) 467-6300

Respectfully submitted,

/s/ Richard L. DeLucia

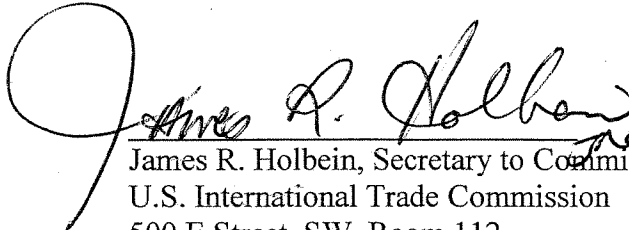
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**CERTAIN HANDHELD ELECTRONIC
COMPUTING DEVICES, RELATED
SOFTWARE, AND COMPONENTS THEREOF**

Inv. No. 337-TA-769

PUBLIC CERTIFICATE OF SERVICE

I, James R. Holbein, hereby certify that the attached **ORDER 4** has been served by hand upon the Commission Investigative Attorney, **Jeffrey Hsu, Esq.**, and the following parties as indicated on **June 17, 2011**.



James R. Holbein, Secretary to Commission
U.S. International Trade Commission
500 E Street, SW, Room 112
Washington, D.C. 20436

On Behalf of Complainant Microsoft Corporation:

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ADDUCI MASTRIANI & SCHAUMBERG LLP
1200 17th Street, NW, 5th Floor
Washington, DC 20036

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() Via Overnight Delivery
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() Other: _____

On Behalf of Respondents Barnes & Noble, Inc. and barnesandnoble.com LLC:

Marcia H. Sundeen, Esq.
KENYON & KENYON LLP
1500 K Street, NW
Washington, DC 20005

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**On Behalf of Respondents Hon Hai Precision Industry Co., Ltd., Foxconn Electronics, Inc.
Foxconn Precision Component (Shenzhen) Co., Ltd. and Foxconn International Holdings
Ltd.:**

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**CERTAIN HANDHELD ELECTRONIC
COMPUTING DEVICES, RELATED
SOFTWARE, AND COMPONENTS THEREOF**

Inv. No. 337-TA-769

PUBLIC CERTIFICATE OF SERVICE – PAGE TWO

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